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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,956	07/11/2003	Nicole Paquette	1627P01US01	2143

20779 7590 03/23/2005

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EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,956

Applicant(s)

PAQUETTE, NICOLE

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 25,27,29-32** are rejected under 35 U.S.C. 103(a) as being unpatentable over Trail (US 4181612) in view of Mattox (US 4384547).

For claim 25, Trail teaches an outdoor feeder comprising a platform 10 having at least one low point and constructed and arranged to be connected at a discharge opening (where the arrow flows through in fig. 2) at each low point to an inlet opening in a hollow support means 14,16 attachable to a base 6,20 and adapted to provide in operation an unobstructed substantially vertical downward waste discharge path from each discharge opening to a replaceable collection container 16 provided within the base; a cover member 4 to be maintained in spaced apart relationship from the platform by a plurality of cover support members provided at selected points on an upper surface of the platform; and provide, in operation, vertical coverage over at least all a horizontal plane connecting all points on a perimeter of the platform. Note, this claim only claims the platform, the cover member and the hanging means because all other language are functional such as "constructed", "arranged", "adapted", etc., so as long as the structure of the platform, the cover member and the hanging means are capable of performing these functional language, the structure reads on the claimed language. However, Trail

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is silent about hanging means provided on an interior surface of the cover adapted for releasably securing a bird feeding means.

Mattox teaches hanging means 61,62,92 for a pet habitat provided on the interior surface of the cover. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ hanging means as taught by Mattox inside the cover of Trail in order to provide a hanging support for feeder or perch or the like.

For claim 27, Trail as modified by Mattox is silent about wherein a ground-facing surface of the base is substantially open. It would have been an obvious substitution of functional equivalent to substitute the closed base bottom of Trail as modified by Mattox with an open base bottom, since both types of base bottom would perform the same function to enclose the waste container therein.

For claim 29, Trail as modified by Mattox (emphasis on Trail) further teaches access means 54.

For claims 30 & 31, Trail as modified by Mattox (emphasis on Trail) further teaches the collection container has a water permeable base comprising a fine mesh 28.

For claim 32, Trail as modified by Mattox does not specifically states that the platform is selected such that a minimum distance of the perimeter from an outer surface of the hollow support means exceeds a maximum limbspan of the animals capable of climbing the hollow support means. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the platform of Trail as modified by Mattox being selected such that a minimum distance of the

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perimeter from an outer surface of the hollow support means exceeds a maximum limbspan of the animals capable of climbing the hollow support means, depending on the size of the animals contained therein.

3. **Claim 26** is rejected under 35 U.S.C. 103(a) as being unpatentable over Trail as modified by Mattox as applied to claim 25 above, and further in view of Golden (US 5549075).

Trail as modified by Mattox is silent about the hollow support means comprises a telescopic tube, wherein in an operating position each section has a larger internal diameter than an immediately higher section, and securing means are provided to retain the sections in a selected position after adjustment.

Golden teaches a feeder support apparatus comprising a hollow support tube 17 that is telescopic and made of multiple encasing sections, each section having a larger internal diameter than an immediately higher section. In addition, Golden further teaches securing means are provided to retain the sections in a selected position after adjustment (see figs. 4 & 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a telescopic support tube as taught by Golden in the apparatus of Trail as modified by Mattox in order to allow different height adjustment.

4. **Claim 28** is rejected under 35 U.S.C. 103(a) as being unpatentable over Trail as modified by Mattox as applied to claims 25 & 27 above, and further in view of Price (GB 2362798A).

Trail as modified by Mattox is silent about the base being provided with fixing means to secure to a supporting surface.

Price teaches a bird table in which the supporting means 10 is being provided with fixing means 12, 112, 110 to secure to a support surface 11. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ fixing means as taught by Price on the base of Trail as modified by Mattox in order to secure the apparatus to a supporting surface.

Response to Arguments

5. Applicant's arguments with respect to claims 25-23 have been considered but are moot in view of the new ground(s) of rejection. However, certain arguments that are applicable will be addressed herein.

Applicant argued that the amendment filed on 7/22/04 should not have resulted in a final rejection because no further search is necessitated.

A final rejection was made because Applicant has amended the claims which forces the Examiner to re-rejection with a new rejection and new combination of prior arts. For example, the pending group of claims necessitated the Examiner to combine Trail in view of Mattox, instead of the original rejection of just Trail. Anytime Applicant amend the main or independent claim(s) with subject matter that wasn't considered before would necessitate further search and re-rejecting, whether with new art(s) or using the old ones, the Examiner would still have to search through and find the art, which to the Examiner is burdensome. Note that the hanging means was not in the

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original independent claim and now added to the new claim 25, thus, this would necessitate re-rejecting and re-research to write up in this detailed action.

Applicant states that Trail does not teach the features in the new claim 25.

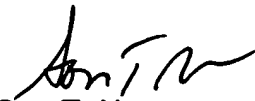
As mentioned in the above, the new claim 25 contains numerous functional language that does not positively recite the claimed elements such as the base, the inlet opening, the discharge path; the collection container, etc. The language merely states that the platform only have to be constructed and arranged to be connected to these elements, which the platform of Trail is structurally capable of doing so. Newly submitted claim 25 pretty much only claims the platform, the cover member and the hanging means; everything else is pretty much moot because as long as these claimed elements are structurally can perform these function, the elements read on the claim.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 703-305-0765 (for the month of March). After March, the Examiner can be reached at 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen
Primary Examiner
Art Unit 3643

stn